

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	

**LAST MILE BROADBAND LLC
REQUEST FOR WAIVER**

Pursuant to Section 1.3 of the Federal Communications Commission's ("Commission" or "FCC") rules,¹ and by and through its undersigned counsel, Last Mile Broadband LLC ("Last Mile" or the "Company"), do hereby respectfully request a waiver of the Commission's Order to provide the most recent three (3) consecutive years of audited financial statements, including balance sheets, net income, and cash flow, within 10 business days of the Public Notice of winning bidders.² Additionally, the Company seeks additional time, 30 days, to have its system design certified by a professional engineer. The Company submits the following in support of its request.

Background

Last Mile is a start-up limited liability company incorporated in Maryland in July 2012 with a mission to provide high-speed Internet service to rural, underserved and unserved areas in Prince George's County (the "County") and throughout the state of Maryland.

Since its incorporation in 2012, the Company has been conducting its due diligence to develop a broadband network to fulfill its mission and vision. As part of its business plan, Last Mile has entered into a public-private partnership with the County to access its telecommunications infrastructure and assets to aid the County in becoming a Gigabit-capable jurisdiction as a participant in the One Maryland: Inter-County Broadband Network.³

¹ 47 C.F.R. §1.3 (2014).

² See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8787-88, para 54 (2014) (*Rural Broadband Experiments Order*).

³ One Maryland: ICBN is the second largest Broadband Technology Opportunities Program ("BTOP") grant recipient (\$115M) funded by the American Recovery and Reinvestment Act of 2009, and the first and only completely owned by state and local government that delivers broadband to every county in a state.

Additionally, since its incorporation, the Company, through one of its principals, has provided the County with outside consulting on developing a broadband network in the County that will provide broadband service to its rural areas; as well as its schools and libraries in communities where a significant percentage (at least 45%) of the student population are on free or reduced meals.

Justification for Waiver

It is well-settled law that waiver of the Commission's rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

A. Special Circumstances Warrant a Deviation from the General Rule

Last Mile has yet to operate as a business in the state by providing telecommunications service to customers. As a start-up, the Company is not yet receiving revenue, holding any assets or paying outstanding debt (other than state property tax and membership dues for the Maryland Broadband Cooperative). Therefore, it does not have three (3) years of audited financial statements. Indeed, Last Mile has not been in corporate existence that long.

Despite its start-up status, the Company is not naïve as to the financial, technical and regulatory requirements to undertake such a mission. Its principals have a combined 50+ years of telecommunications project management, including facility and cable infrastructure installation, maintenance, upgrade and regulatory compliance.

When filing its Expression of Interest in this proceeding, Last Mile received a commitment from the County to provide the following funding commitments, services and access: (1) additional funding for building the backbone or middle-mile connectivity to support the build out of the last mile wireline and wireless broadband connectivity to the proposed service area; (2) access to key County assets such as fiber, conduit, utility poles and real estate; (3) assist with accessing state-owned resources such as towers and fiber networks; and (4) streamline local permitting and inspection process to support the Company's network construction.⁴

To bring much needed broadband service to the eight (8) Census blocks that Last Mile provisionally won CAF funding, the Company estimates that the construction/installation costs will be approximately \$2.5-4M.⁵ This includes \$300,000 that will be necessary to create the administrative support to handle marketing, customer service and billing for its anticipated Lifeline and non-Lifeline customers.

In addition to CAF, County and State funding, the Company intends to seek funding from others sources such as the Telecommunications Development Fund, a venture capitalist fund whose primary mission is to aid start-up small business in the fields of telecommunications and technology.

⁴ See Last Mile Broadband LLC Expression of Interest and Letter of Support prepared by Prince George's County filed in *Rural Broadband Experiments Order*, March 7, 2014.

⁵ To maintain confidentiality, a full cost estimate is being submitted with the system design and network diagram as part of its FCC Form 5620.

Because Last Mile is a start-up company and has not been in existence for three years, waiver of this funding requirement is warranted.

Moreover, to save on upfront costs, the Company utilized in-house resources and its membership in the Maryland Broadband Cooperative to help create its network design as well as develop its cost model for building out the eight (8) Census blocks provisionally won. Due to the shortened time frame (10 days) to submit the first round of documentation to the FCC, Last Mile has had a professional engineer to review the its system design, but not certify it.⁶ Due to the impending holiday travel schedule of its selected professional engineer, Ali Kuzehkanani of Lukas, Nace Gutierrez & Sachs, LLP, the Company seeks additional time for him to certify the network design being submitted to the FCC.

B. Deviation from the Requirement will Serve the Public Interest

The impetus of this entire proceeding is to “advance the deployment of voice and broadband – capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural American benefit from the historic technology transition that are transforming our nation’s communications services.”⁷ This is the public interest aim for this congressional and FCC initiative. Both the Congress and the Commission have made the case on the importance of closing the digital divide.

Without the attempt of Last Mile’s entry into an unserved, rural market, the residents of southern Prince George’s County will continue to suffer from the digital divide, including its schools and libraries that may serve potential Lifeline eligible customers (e.g., Baden Elementary School and Baden Library).

C. FCC Should Consider Hardship for Last Mile Broadband

In *WAIT Radio v. FCC*, 418 F.2d 1153,1159 (D.C. Cir 1969), the D.C. Circuit Court of Appeals decided that the FCC should take into account considerations of hardship, equity or more effective implementation of overall policy on an individual basis.

The FCC should take into account that Last Mile is a local, small business that incorporated less than three years ago. Requiring it to provide audited financial statements when the Company has yet to generate income or hold assets is hardship that it cannot overcome.

Moreover, the Commission expressed excitement over the number of expressions of interest filed by a wide range of entities proposing service over diverse technologies as well as the number applicants that participated in the auction for CAF funding, citing that bidders included a diverse group of entities, including competitive providers, electric utilities, wireless Internet service providers and others.⁸ Last Mile is exemplary of the type of new entrants into the

⁶ Last Mile originally solicited the engineering services of CTC to develop its system and network design. However, the Company believes for competitive reasons, CTC withdrew its proposal to create the design and certify it for a fee of \$3,500. See attached email from John L. Huggins to Tamara Davis Brown dated December 16, 2014.

⁷ See *Rural Broadband Experiments Order*, 29 FCC Rcd 8770, para. 1(2014).

⁸ See *FCC Launches Rural Broadband Expansion Experiments* WC Docket Nos. 10-90, 14-58, News Release, (FCC rel. July 11, 2014). See also *Rural Broadband Experiments Draws Interest from Almost 200 Applicants*, WC Docket Nos. 10-90, 14-58, News Release, (FCC rel. Nov. 12, 2014).

telecommunications industry that the FCC is seeking. It is in the public interest to ensure that local providers like Last Mile play an important role in delivering high-speed Internet service to rural and underserved areas.

The provisional award of \$260,000 to construct a broadband network in very high cost areas of the County is not a great risk of CAF funds for denial of this instant request. The Commission has placed other financial safeguards to protect CAF funding in this matter (i.e., letters of credit from a reputable banking institution).

Last Mile has prepared a system design that is being submitted via FCC Form 5620. This design has been reviewed by Ali Kuzehkanani, P.E. and can be certified by him over the next 30 days.⁹

Conclusion

Based on the foregoing, the Company believes that waiver of the post-auction requirement to provide three years of audited financial statement is warranted due to the Company's nascent corporate history. Last Mile also believes that an extension of time to have its selected professional engineer to certify the system design is equitable in light of the The request also is in the public interest to ensure that unserved, underserved and rural areas of the County and the state of Maryland obtain the technological advance that broadband can bring.

Last Mile Broadband LLC respectfully requests grant of the instant Request for Waiver.

Respectfully submitted,

A handwritten signature in blue ink that reads "Tamara Davis Brown". The signature is fluid and cursive, with the first name "Tamara" being the most prominent.

Tamara Davis Brown

Counsel for Last Mile Broadband LLC

December 19, 2014

Attachments(2)

⁹ See attached email from Ali Kuzehkanani, P.E., to Tamara Davis Brown dated December 18, 2014.

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tybrownesq@comcast.net

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RE: Request for Waiver

From : John Huggins <JHuggins@sa-techinc.com>

Tue, Dec 16, 2014 06:23 PM

Subject : RE: Request for Waiver**To :** Tamara Davis Brown <tybrownesq@comcast.net>

Hey Tamara,

I will take a look when I get a moment. CTC back out of supporting our effort. I getting with Victor Allen in the morning to see what assistance he can provide. He is not a PE, but he can help with getting the right info together.

John

From: Tamara Davis Brown [mailto:tybrownesq@comcast.net]**Sent:** Tuesday, December 16, 2014 3:44 PM**To:** Huggins, John; Huggins, John**Subject:** Request for Waiver

John,

I know that your hands are full. I'm attaching the first draft of the Request for Waiver. I have not fully proofed it yet, but will do so. You can review it only if you have time.

The only thing that I need from you is the total projected costs to build out the 8 Census blocks. Thanks.

Tamara

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RE: Rural Broadband Experiment -- System Design due Friday, 12/19/14

From : Ali Kuzehkanani <AKuzehkanani@fcclaw.com>

Thu, Dec 18, 2014 02:16 PM

Subject : RE: Rural Broadband Experiment -- System Design due Friday, 12/19/14**To :** Tamara Davis Brown <tybrownesq@comcast.net>**Cc :** John Huggins <jhuggins@sa-techinc.com>, John Huggins <jlhugginsjr@gmail.com>, Leila Rezanavaz <LRezanavaz@fcclaw.com>

Tamara:

Great to hear from you. I apologize for delay in getting back to you, but somehow I just saw the email. We can review the system design, but won't be able to sign off on it. Once again, sorry for the delay.

Thanks

Ali

From: Tamara Davis Brown [mailto:tybrownesq@comcast.net]**Sent:** Tuesday, December 16, 2014 8:11 AM**To:** Ali Kuzehkanani; Leila Rezanavaz**Cc:** John Huggins; Huggins, John**Subject:** Rural Broadband Experiment -- System Design due Friday, 12/19/14

Hi Leila and Ali,

I hope that all is well. Sorry to have missed the office's annual Thanksgiving luncheon this year; I had an appointment that day. I hope that you all are having a wonderful Holiday season.

I am emailing you to ask whether either of you would be available this week (Thursday or Friday) to review my broadband company's system design.

On December 5, 2014, we were one of only 40 applicants selected as provisional winners of the FCC's Rural Broadband Experiment Funding auction (over 200 applications were filed). Our project will be a public-private partnership with Prince George's County (and the State of Maryland) to provide high-speed Internet service to underserved, underserved rural areas of the County and the State.

Under the Rural Broadband Experiment auction, we won 8 census blocks that cover Aquasco, Baden, Cedarville, Croom and parts of Brandywine in southern Prince George's County, which is close to where my family lives. My business partner, John Huggins is preparing a systems design, but the FCC requires a professional engineer to review and sign off on the design.

Our financial and technical qualifications are due this Friday, December 19, 2014.

Would either of you be available to review this documentation for us? Thanks.

Tamara (Davis Brown)
Last Mile Broadband LLC
301-704-0930
